

# Let's not fool ourselves either!

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I read with great interest the authors' blogpost ["Don't be fooled by autocrats!"](#). However, to my great regret there are some factual errors in the text which require clarification and, consequently, the post's very dire conclusion about the actual situation in Hungary shall be to a certain extent revised.

The authors draw a very dark picture about the current state of rule of law in Hungary, first and foremost in the context of the so-called "Enabling Act" (hereinafter: the Act), which gave – in the authors' view – unlimited powers to Viktor Orbán.

At the outset, it shall be noted that Section 3 of the Act – which allows the Government decrees' effect to run until the end of the State of Danger – is not "cardinal", i.e. its amendment does not require a 2/3 majority in the Parliament. Section 9 of the Act lists the sections that are "cardinal" – Section 3 is not among these.

Consequently, even if the ruling party FIDESZ loses its very narrow 2/3 majority ([they have 133 out of 199 seats in the Parliament](#) – this is exactly 2/3 of the seats, so if they lose one MP, the cardinal majority is gone) they still can amend Section 3 of the Enabling Act.

I agree with the authors in that the authorization given without a strict time limit is against the rule of law since it reduces significantly – almost to zero – the Parliament's control over the Government. However, let us not fool ourselves concerning the real role of the Parliament in Hungary. As the blogpost itself later rightly states, in the last 10 years the Parliament has been an obedient ally of the Prime Minister, Viktor Orbán's ideas have always prevailed. The Act only makes this state of affairs more visible, but from a practical point of view, nothing changes – business as usual. By the expression "business as usual", I only mean the way important decisions are made in Hungary during the current epidemic crisis, not their actual content which shows significant deterioration (I will get back to that issue later.)

As a footnote, I need to observe that the law severely restricting transgender people's rights has not yet been enacted. It is only a [draft](#) at the moment. Most probably the Parliament will pass it, however, at present it is "only" the serious threat of an injustice, not an injustice that has already occurred.

As to the army – maybe my understanding of the post is erroneous, but it paints a picture of Hungary of becoming a "junta" where the military has seized effective control. The events described in the blogpost (the army taking the leadership of hospitals and some enterprises relevant in the fight against the pandemic) were more a media show than anything else – the Hungarian army is so small that it simply does not have the personnel to do more effectively. As to the visibility of the

military on the streets – my personal subjective view is that both the military and the police are barely visible and definitely far from being much more present than in normal times. So, the military [did not take over](#).

As a legal practitioner, I respectfully disagree with the allegation that trial-level courts are effectively closed. The authors erroneously claim that “courts can suspend proceedings in any civil case at the request of either party as long as it would be epidemiologically dangerous for people to appear in person.” There is no such provision in the Hungarian legal system at the moment. Subsection (5) of Section 21 of the 74/2020 Governmental decree only stipulates that the joint request of the parties the procedure can be suspended unlimited times. However, it is hard to imagine that for example in the Kartonpack case the plaintiffs would accept suspension. In general, the civil procedures have turned towards obtaining written pleas. However, the courts hold the hearings on the merits via video conference. It is true that there was a suspension of all the proceedings for couple of weeks at the beginning of the State of Danger. However, this general measure was lifted. In my ongoing cases so far no hearing was re-scheduled but I received official court decision about the continuation of the procedures. I think I will receive the notification about the actual dates of the hearings soon – we will see how it is implemented in practice. Consequently, the civil courts – as well as the criminal ones – are indeed working.

I do not have a practice in criminal law, but it also seems to me a bit misleading to allege that prosecutors can decide that a case should be suspended or postponed during the emergency. The prosecutor can – similarly to the criminal courts and investigation authorities – postpone certain procedural steps if they represent epidemic risks (Section 51 of the Government decree). However, the prosecutor is not the absolute king of the case as the blogpost suggests. So far, I am unaware of any misuse of this power.

As to the Constitutional Court, I share many of the authors’ concerns. However, for the sake of fairness it shall be noted that in the first 5 weeks of the pandemic in Hungary no new cases were registered. Now slowly new cases begin to appear in the Constitutional Court’s [docket](#), however, for the time being they do not seem to concern the emergency laws. This most probably means that cases related to the present constitutional crisis have not yet reached the Constitutional Court. I think sooner or later they will arrive. I have no illusions about the Constitutional Court, however, even this Constitutional Court found in some cases for the applicants (although it is true that in politically sensitive cases they never interfered with the Government).

During the pandemic crisis, some blatant violations of the Basic Law occurred, I hope that at least some of them will be remedied – the Constitutional Court cannot dismiss all the cases brought before it. It shall be pointed out that many Government decrees can be directly challenged before the Constitutional Court. It is true that in Hungary there is no *actio popularis*, if someone intends to challenge a legal regulation, his/her so called “direct involvement” is required. However, the Government decrees affect our life directly in many instances – it is enough to think about the regulation establishing the lockdown and the list is long. Consequently, I

think and hope that there will be cases before the Constitutional Court. We will see what it will do with them.

Lastly, at least two major attacks on the rule of law have been omitted from the blogpost. The first is the inadequate public access to relevant information. The Government has not been informing the public about crucial data – on many occasions, journalists did not receive answers to their questions. Although I need to admit that it is not possible answer all the questions raised, in a normal press conference one journalist may raise maximum 2-3 questions, now journalists raise dozens in writing. To answer them all would be a mission impossible – however, this difficulty is by no means is an excuse to the seemingly systematic refusal of answering questions of certain journalists and media entities.

More importantly, the attack on opposition-led municipalities is completely left out from the analysis (the blogpost was published on 22 April, and the impugned Government decrees were enacted on 17 April – however, if the final text of the post was sent to the editors earlier than this date, the lack of this issue obviously cannot be imputed to the authors). Last October, the Orbán regime received a huge blow in the municipal elections: the opposition really gained territory, winning in numerous important cities, including the post of the mayor of Budapest. Now, the Government sees an opportunity to make them suffer.

There were numerous steps taken including an ongoing media campaign blaming the opposition for all the hardships that have occurred during the present crisis. Moreover, concrete legal steps were made. The Government issued Decree 135/2020. In this decree, the Government ruled that “special economical areas” can be established in the territory of the municipalities. These territories go under the authority of the county municipalities – the regional level of the municipalities where FIDESZ has a majority. In these areas, the local industry tax is also gathered by the county municipalities. With Decree 136/2020, the Government already established one such area in the town of Göd which is run by an opposition mayor. This is the area where a big Samsung factory is located. The town consequently loses the local industry tax paid by Samsung – which is 1/3 of its yearly budget. This basically renders the functioning of the town [impossible](#).

To summarize it all, the situation of the rule of law in Hungary is dire. Some steps were taken that are in clear breach of the Basic Law. However, when criticising the Orbán-regime, one shall be extremely cautious – the factual basis shall be very strong. If the critics fail to secure such a sound basis, as the authors of the present blogpost regrettably did, a door might be open for refusing the otherwise meritorious criticism by simply pointing out the inaccuracies and saying that the critics distort the truth. This would block the meaningful debate which would be more than regrettable.

